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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,257	04/29/2005	Kjetil Naesje	1935-00157	7187
26753 7590 11/10/2009 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER HYLTON, ROBIN ANNETTE				
ART UNIT 3781		PAPER NUMBER		
MAIL DATE 11/10/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,257

Applicant(s)

NAESJE, KJETIL

Examiner

ROBIN HYLTON

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on June 29, 2009. These drawings are approved.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-15 and 17-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 7,419,069). Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a device of a valve for a drinking receptacle having an internal pressure, in which the valve is provided in an enclosure, a downstream end thereof being provided with a drinking opening, and an upstream end thereof being open and attached around an opening in the drinking receptacle when in position of use, whereby the valve may open and close to liquid outflow from the drinking receptacle via said drinking opening, which is provided downstream of the valve; in which the valve comprises: a flexible membrane body provided with an attachment end fixedly connected to the enclosure when in position of use, and a free maneuvering end pressure-sealingly and movably connected to the enclosure; a valve head; and a valve seat against which the valve head seals when the valve is inactive and in its position of rest; in which the enclosure also contains: a pressure balancing chamber communicating with an ambient pressure of the enclosure and one side of the membrane body; and a suction chamber communicating with said downstream drinking opening and the other side of the membrane body; in which the valve is arranged to open to said liquid outflow when the suction chamber, via said downstream drinking opening, is supplied an underpressure which is less than said ambient pressure by a predetermined value, whereby the membrane body is exposed to a pressure difference that activates and moves the membrane body with a valve-opening force, characterized in that the valve head is fixedly and by-passably connected to the enclosure; wherein the valve seat is connected to the maneuvering end of the membrane body; wherein the valve seat is provided upstream of the valve head; and wherein the valve seat is pressure-sealingly and movably connected to the enclosure; whereby the valve seat may be moved

away from the valve head and open the valve to liquid outflow when the suction chamber is supplied said underpressure.

The instant claims further set forth the movable maneuvering end is positioned at an axial distance from the attachment end and is connected in a tensile-force-transmitting manner to the valve sealing member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further set forth the movable maneuvering end is positioned at an axial distance from the attachment end and is connected in a tensile-force-transmitting manner to the valve sealing member to more definitely set forth the claimed invention.

4. Claims 1-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-9 of copending Application No. 10/479,906. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a device for controlling the flow of liquid from a drinking container, the liquid flow being controlled by the pressure difference supplied by the user on consumption of the liquid, consisting of a membrane, valve stem, valve head, and cap, characterized in that the pressure difference across the membrane moves the membrane, the movement of the membrane being transmitted to the valve head through the valve stem, so that liquid flow will be allowed as long as the pressure difference is maintained.

The instant claims further set forth the movable maneuvering end is positioned at an axial distance from the attachment end and is connected in a tensile-force-transmitting manner to the valve sealing member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further set forth the movable maneuvering end is positioned at an axial distance from

the attachment end and is connected in a tensile-force-transmitting manner to the valve sealing member to more definitely set forth the claimed invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

5. Claims 1-15 and 17-20 would be allowable if rewritten or amended to overcome the non-statutory obviousness-type double patenting rejection set forth in this Office action.

Conclusion

6. In view of the new ground of rejection, this Office action is made non-final.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

8. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

9. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

Art Unit: 3781

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

November 9, 2009

/Robin A. Hylton/
Robin A. Hylton
Primary Examiner GAU 3781